

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District <u>COURT OF MASSACHUSETTS</u>
Name of Movant <u>RAFAEL FONTANEZ</u>	Prisoner No. <u>90455-038</u>	Case No. <u>04-30007MAP</u>
Place of Confinement <u>FORT DIX FEDERAL CORRECTION INSTITUTION (FCI)</u>		
UNITED STATES OF AMERICA		V. <u>RAFAEL FONTANEZ</u> (name under which convicted)

MOTION

1. Name and location of court which entered the judgment of conviction under attack DISTRICT COURT OF MASSACHUSETTS, FEDERAL BUILDING & COURT HOUSE, 1550 MAIN ST, SPRI, MA 01103
2. Date of judgment of conviction 1/30/07
3. Length of sentence 18 YEARS (216 MONTHS)
4. Nature of offense involved (all counts) 1 COUNT OF CONSPIRACY UNDER 21 USC § 846, 3 COUNTS OF POSSESSION AND DISTRIBUTION UNDER 21 USC § 841
5. What was your plea? (Check one)
 - (a) Not guilty ☒
 - (b) Guilty ☐
 - (c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

6. If you pleaded not guilty, what kind of trial did you have? (Check one)
 - (a) Jury ☒
 - (b) Judge only ☐
7. Did you testify at the trial?
 - Yes ☒ No ☐
8. Did you appeal from the judgment of conviction?
 - Yes ☒ No ☐

9. If you did appeal, answer the following:

(a) Name of court FIRST CIRCUIT COURT OF APPEALS

(b) Result AFFIRMED CONVICTION

(c) Date of result 5/29/02

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

Yes ☒ No ☒

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court UNITED STATES SUPREME COURT

(2) Nature of proceeding WRIT OF CERTIORARI

(3) Grounds raised INSUFFICIENCY OF EVIDENCE AND EVIDENTIARY ISSUES

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

(5) Result WRIT OF CERTIORARI DENIED

(6) Date of result 1/23/03

(b) As to any second petition, application or motion give the same information:

(1) Name of court N/A

(2) Name of proceeding

(3) Grounds raised

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result N/A

(6) Date of result N/A

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☒ No ☐

(2) Second petition, etc. Yes ☐ No ☐

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not

1. **THESE** 2. **THESE** 3. **THESE** 4. **THESE** 5. **THESE** 6. **THESE** 7. **THESE** 8. **THESE** 9. **THESE** 10. **THESE** 11. **THESE** 12. **THESE** 13. **THESE** 14. **THESE** 15. **THESE** 16. **THESE** 17. **THESE** 18. **THESE** 19. **THESE** 20. **THESE** 21. **THESE** 22. **THESE** 23. **THESE** 24. **THESE** 25. **THESE** 26. **THESE** 27. **THESE** 28. **THESE** 29. **THESE** 30. **THESE** 31. **THESE** 32. **THESE** 33. **THESE** 34. **THESE** 35. **THESE** 36. **THESE** 37. **THESE** 38. **THESE** 39. **THESE** 40. **THESE** 41. **THESE** 42. **THESE** 43. **THESE** 44. **THESE** 45. **THESE** 46. **THESE** 47. **THESE** 48. **THESE** 49. **THESE** 50. **THESE** 51. **THESE** 52. **THESE** 53. **THESE** 54. **THESE** 55. **THESE** 56. **THESE** 57. **THESE** 58. **THESE** 59. **THESE** 60. **THESE** 61. **THESE** 62. **THESE** 63. **THESE** 64. **THESE** 65. **THESE** 66. **THESE** 67. **THESE** 68. **THESE** 69. **THESE** 70. **THESE** 71. **THESE** 72. **THESE** 73. **THESE** 74. **THESE** 75. **THESE** 76. **THESE** 77. **THESE** 78. **THESE** 79. **THESE** 80. **THESE** 81. **THESE** 82. **THESE** 83. **THESE** 84. **THESE** 85. **THESE** 86. **THESE** 87. **THESE** 88. **THESE** 89. **THESE** 90. **THESE** 91. **THESE** 92. **THESE** 93. **THESE** 94. **THESE** 95. **THESE** 96. **THESE** 97. **THESE** 98. **THESE** 99. **THESE** 100. **THESE**

10. *Journal of the American Medical Association*, 2000; 284: 1039-1044.

Circumstance	Percentage of Respondents (%)
If someone is attacking you	85
If someone is threatening you	75
If someone is harassing you	65
If someone is insulting you	55
If someone is annoying you	45

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of these grounds.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.

(b) Conviction obtained by use of coerced confession.

(4)

- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: SEE: ATTACHED MEMORANDUM OF LAW AND ACCOMPANYING
DOCUMENTS

Supporting FACTS (state *briefly* without citing cases or law):

B. Ground two:

Supporting FACTS (state *briefly* without citing cases or law):

C. Ground three:

Supporting FACTS (state *briefly* without citing cases or law):

D. Ground four: _____

Supporting FACTS (state *briefly* without citing cases or law): _____

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: _____

Denial of Effective Assistance of Counsel. Only Appropriate
in a 28 USC § 2255 Proceeding in the District Court
where Judgment was Rendered.

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing NONE

(b) At arraignment and plea MICHAEL CRUZ

(c) At trial JOSEPH BERNARD

(d) At sentencing JOSEPH BERNARD AND JACK CURTISS

(6)

(e) On appeal _____

(f) In any post-conviction proceeding

GEORGE GORMLEY

(g) On appeal from any adverse ruling in a post-conviction proceeding

NONE

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and a approximately the same time?

Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future:

(b) Give date and length of the above sentence:

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☐

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

12/8/03
Date

Rafael J. Martinez
Signature of Movant